The Cochin Factories Bill.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I beg to present the Cochin Factories Bill as reported by the Select Committee.* I may state that the Select Committee has not made any modifications at all. We have no doubt a very long, almost confusing, dissenting minute by one of the Hon'ble Members of the Select Committee. I would leave the Members to read and understand what seems to me to be an obscure note rather than attempt to give my opinion on it which really is incomprehensible to me.

I beg to move that the Bill may be taken up for consideration.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—I beg to second it.

Motion was put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I think there is a mistake. At page 32 I find there are two sections. Section 78 has to be omitted and sections 79, 80 and 81 has to be numbered as 80, 81 and 82.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The Bill is alright. These mistakes will be considered when the contents are revised.

Mr. T. S. Balarama Ayyar *(Trichur North).*—In section 2 (h) also there are a lot of printing mistakes. They may be corrected. The word 'on' between 'persons' and 'connected' should be 'or'. In sub-section (k) also the word 'occupied' should be 'occupier'.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—All these printing mistakes will be made alright when the Bill is revised.

Clauses 2 to 4 were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*—I beg to move the following amendment to clause 5 of the Bill :

In Section 5 of the Cochin Factories Bill, (a) in sub-section (i),—

(i) for the words ' premises whereon or within the precincts whereof' the words ' place wherein ' shall be substituted ; and

(ii) for the words ' whereon or within the precincts whereof ' where they occur for the second time, the word ' wherein ' shall be substituted ;

* Vide Appendix II.

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(b) in sub-section (2) for the words 'premises or class of premises' the words ' place or class of places' shall be substituted ; and

(c) in sub-section (3) for the word ' premises ' the word ' place ', and for the word ' thereon 'the word 'therein' shall be substituted.

These amendments are for correction in the draft language.

Mr. T. S. Balarama Ayyar *(Trichur North).*—This is a change from the British Act.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Hon'ble Members will realise that this section is almost the same as contained in the British Act. But no doubt there is a slight departure from the British Indian Act. The word 'premises' seems to have given some trouble. 'Place' include premises, but 'premises' never include place.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—Subsequent to the report of the Select Committee, there is a later amendment to the British Act, Act VIII of 1936. It is only with a view to bring it on the same lines as the British Act that this amendment has been proposed.

Amendment was put and carried.

Clause 5 as amended was put and carried.

Clauses 6 to 9 were put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I beg to move the following amendment to clause 10 sub-section (2) "Towards the end add 'until a Chief Inspector is appointed, the District Magistrate shall ex-officio be the Chief Inspector". The object of this addition is to save the appointment of the Chief Inspector. The appointment of a Chief Inspector becomes necessary only when there are a number of Inspectors. Even for the whole Presidency of Bombay including Sind there are only three senior Inspectors one junior Inspector and one Chief Inspector. As far as our State is concerned there is not even scope for one Inspector. We find that the Inspector of Factories is also the Inspector of Boilers. For some time to come the necessity for more than one Inspector will not arise. If the Bill as it is is passed Government will find it necessary to appoint a Chief Inspector because there are certain powers vested in the Chief Inspector which the Inspectors do not possess.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—At present the District Magistrate is the ex-officio Inspector of Factories.

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Mr. T. S. Balarama Ayyar *(Trichur North).*—But if you appoint the District Magistrate as the Chief Inspector there is no difficulty whatever.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—It will be borne in mind by Government. Government may by notification appoint any person as Chief Inspector. It can be done by means of a notification.

Mr. T. S. Balarama Ayyar *(Trichur North).*—The next amendment is an amendment to sub-section (4): "The District Magistrate shall, in virtue of his office, have the powers of a Chief Inspector, with such restrictions if any which Government may by notification specify in this behalf.' It also goes together. It will remove the necessity for a notification defining the powers of the Inspectors, so long as there is only one Inspector.

Mr. A. V. Moothedan *(Chalakudi).*—I second it.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I withdraw the amendment with the leave of the House.

Amendments were by leave withdrawn.

Clause 10 was put and carried.

Clauses 11 to 30 were put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I beg to move the following amendment to clause 31, sub-division (2): "between the words 'concerned' and 'as' insert the words 'or otherwise'."

My object in bringing this amendment is this. In British India there is no difficulty at all to get bodies representing different industries. If you take the textile industry you have got the Textile Association. Similarly you have got various bodies representing various industries. But here Government will feel the difficulty to get persons appointed representing any particular industry. If my amendment is accepted the Municipality and Panchayat and similar bodies may be asked to nominate persons; 'or otherwise' can include bodies that do not represent any particular industry.

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—You want to extend the power of Government so that selections may be made from bodies like Municipalities and Panchayats?

Mr. A. V. Moothedan *(Chalakudi).*—I second it.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Government have no objection for the amendment.

Amendment was put and carried.

Clause 31, as amended, was put and carried.

Clauses 32 to 42 were put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*—Before we proceed to clause 50, in clause 43 (1) fourth line, the word "provisions" should be "provisos".

Mr. T. S. Narayana Ayyar *(Secretary to Government).*—Yes, it should be "provisos".

Clauses 43 to 49 were put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I beg to move the amendment to clause 50: "Add at the end 'This section shall not apply to Children enrolled as workers in a factory, before the commencement of this Regulation'.

Let me explain it further. Under the present Factories Act, the definition of the word "Children" is persons between 9 and 14 instead of 12 and 15 in the Bill before the House. If this clause is adopted as it is, the result will be all persons who are between 9 and 12 will immediately without any previous notice, be thrown out and the number of such persons that are likely to be thrown out, I do not think, will be anything less than 2 to 3 thousand throughout the State.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—That shows that the evil is very widespread.

Mr. T. S. Balarama Ayyar *(Trichur North)*—A question may naturally be asked as to whether this trouble was not experienced in British India when the age-limit was raised to 12. If we go into the details of the history of the factory legislation in British India, it will have to be immediately conceded that the legislation there was enacted very gradually. It was a steady growth—a gradual growth. But here in Cochin, it was not so. The first Factory Act in British India was in 1881. That mainly affected only children. The age-limit fixed was 7 years to 12 years. Persons above 7 years were allowed to work in factories and the period of work was 9 hours a day. No working period was fixed for adults and 100 was the number constituting a factory. That was in 1881. The next important legislation was in 1891, 10 years after. The age of children was raised from 7 to 9. 9 to 14 was the limit fixed.

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The working period was reduced from 9 to 7 hours. The working period of women was also fixed at 11 hours a day. No period was fixed for male adults in the Act of 1891 and I believe the number for constituting factories was reduced to 50 from 100. The next step was in 1911, 20 years later. In the Act of 1911, the age of children was kept the same but the working period was reduced to 6 hours and the limit for the period of work for male adults was fixed at 12 hours a day, and I believe the number that consituted the factory was reduced to 20. The next important legislation in British India was in the year 1922. That raised the age of children from '9 to 14' to '12 to 15' as it is in the bill before us. What we contemplate or what we propose to do in 1936 was done in British India in 1922. And in our State, to use the words of the Hon'ble Member for Law, this evil was allowed to be practiced for 14 years and he is not having the patience to allow it to continue for another three years. The period of work of Male Adults was reduced to sixty hours a week. That was the important Act of 1922. There were further amendments in 1923 and 1926, and further in 1934, and our bill is based upon the Act of 1934. Our existing Factory Act is based on, as I pointed out before, the British India Factory Act of 1891. That is to say, our Factory Act is nearly 45 years old. Even though it was enacted only in 1086 M. E., it is based upon the Act of British India of 1891. It is a very long jump, from 1891—1936. One should be careful in taking such a long jump as this. A very pertinent question was put by the Hon'ble Deputy President as to what was done in British India to obviate the trouble that I referred to when the age limit was raised from '9—14' to '12—15'. It was 9 to 14 before 1922. The minimum age was raised from 9 to 12 in 1922. A Royal Commission on Factories was appointed in 1916 and it was evident even in that year, that the minimum age of children was going to be raised from 9 to 12. So early as from 1916 the owners of Factories prepared themselves for that. Notice of six years they really had, and therefore, every far-seeing factory owner stopped enrolling children below 12 years the moment he got intimation of the likelihood of the age being raised to 12. I may now tell the House that when in 1934, the working period of adults in British India was reduced from 10 to 9, the Sitaram Mills immediately reduced the working period of the male adult from 10 to 9 even though the Act was not in force, simply because, anticipating that the law would in due course be brought into force here and the working period reduced to nine, there should not be felt any trouble

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at that time. What we are now going to do all on a sudden is to raise the age limit from 9 to 12. The result will be, as I pointed out, the persons who are below 12 will have to be thrown out. As far as the Sitaram Mill is concerned, even though there were 300 children working there, since in British India the age limit was raised from 9 to 12, I immediatedly stopped admitting persons below 12, but I do not think that other factories have done it. I know that there are many persons who are below 12 years in other factories. If before allowing sufficient time the law is brought into force, it will affect more the children than the employers concerned, because, in these days when unemployment is so serious, it will not be found difficult to replace a child by an adult. What will the poor parents do? Another thing that should be remembered is that the work allotted to these children in many of the factories is such as is not likely to seriously affect their health. You have only to go to a Tile factory. You will find that the child does not even carry a tile. Without much physical strain, he is able, to help his poor parents. All on a sudden without giving any notice whatsoever, if children between 9 and 12 years are thrown out, I say it will be causing much distress on many a poor family. What I am asking is to extend this only to those who have enrolled themselves as workers before the commencement of this regulation, that is to say, for one year, there will be children of 9 years, from the second year there will be only children of 10 years, because this cannot apply to new persons who have to be enrolled. Therefore it cannot affect the child labour for any long period by exempting the workers who are already enrolled.

Mr. P. Raman Menon *(Mulakunnathukavu).*—I second it.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I am sorry, Sir, the Government cannot accept this amendment.

For one thing I am told that most of the factory owners appear to have followed the Sitaram Mill. I am told by no less an authority as the Director of Public Health who had occasion to go through all the Factories of the State that he noticed nowhere in any of the factories children below 12.

Mr. P. Raman Menon *(Mulakunnathukavu).*— By the appearance of the children?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes. We cannot have evidence of age always. He went there and ascertained this fact. This is first hand information which hardly any of us have. The Hon'ble Members'

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apprehension I think, in the light of that information, cannot be considered to have any ground.

Rao Sahib I. N. Menon *(Director of Public Instruction).*— I wish to say one word. As the rule stands at present, we do not admit pupils under 12 years even in the vocational schools. In the second place, we have on the legislative anvil, the Compulsory Primary Education Bill which I think will compel the attendance of children at school somewhere very near the age of 12. To have two conflicting pieces of legislation one of them obviously tending towards humanitarianism would be very ridiculous to say the least.

Mr. T. S. Balarama Ayyar *(Trichur North).*— No doubt the Factory Regulation was before the public about a year ago. It may be six months more before it actually comes into operation. The provision that I ask for is only to be in force for three years. It is not to be in force for ever. As the evil was allowed to exist for a long period the removing of it also should be done in such a way as will not cause greater hardship. I therefore press my motion to a division.

Amendment was put and lost.

Clause 50 was put and carried.

Clauses 51 and 52 were put and carried.

Mr. T. S. Balarama Ayyar *(Tichur North).*—Sir, I rise to move the following amendment to Clause 53 'Add at the end "This section shall not apply in the case of adolescents enrolled as workers in a factory before the commencement of this Regulation"

In the present act there is no such clause as adolescents. All above 14 are adults. According to the new Act all those who are 15 will continue to be children unless certified by the civil surgeon as adults. According to the present Factory Act they automatically become adults the moment they pass their fourteenth year. According to the new Act those above 15 continue to be children unless the civil surgeon certifies them as fit to be worked as adults. The result is going to be that at least half the number who are now working as adults will have to work as children because I presume that only about half will be passed by the Civil Surgeon as fit to be worked as adults. The other half he is likely declare as unfit to be worked as adults. And the result will be a very large number who are now adults stand the chance of losing their work completely because it may not be to the interest of the employer to take

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half timers. You cannot force an employer to work a particular person as a half timer. He will naturally turn round and tell you that I shall have one full timer instead of two half timers. If any particular person cannot be worked as a full timer the employer will throw him out and appoint a person in his place who can be worked as a full timer. Even in my factory, there are about 250 adolescents. Out of this 250, the Civil Surgeon may not certify more than 125. The result will be that 125 will have to be thrown out. So I am appealing on behalf of these adolescents that this should not apply to such of them as are working as adults before this Act comes into force. Since I have given all my reasons while talking about children, I think I need not repeat them. These adolescents will be unfit to join any Primary School when the Primary Education is going to be made free and compulsory, because they are above 15.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—May I know why you anticipate that the Civil Surgeon will not certify the whole 250 as adults?

Mr. T. S. Balarama Ayyar *(Trichur North).*— What is the purpose with which you have said that persons of 15 to 17 should not be worked as adults, unless certified by the Civil Surgeon? Because, you anticipate that a large number will be found unfit to be regarded as adults according to your Acts.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Does the Hon'ble Member, I wonder, think that all should be classified as adults? That reminds me of several similar sentiments expressed by people whenever any progressive legislation had been attempted. It has been a common cry more or less conservative. "We have survived till now without any legislation. Why do you want such legislation?" I don't think that in this modern century of progress such argument appeals. I do not try to answer that. Let us consider the case put forward by the Hon'ble Member for Trichur North. Supposing the Civil Surgeon is prepared to grant certificates to 50 per cent and that he is not prepared to grant certificates to the remaining. Does it not indicate that it is a very severe case for restricting adult labour only to such adolescents who are certified as really fit? I should consider it as conclusive proof. No doubt there may be some little inconvenience here during the transition period or thereafter. When the Government legislate they have taken into consideration this important aspect of the matter. The welfare of the

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State subjects is far more important from the Government's view point than the convenience of particular individuals, managers or others.

Mr. A. V. Moothedan *(Chalakkudi).*— I oppose this amendment. Generally in such matters owners of factories and labourers would say something but the Government would take moderate view of such matters.

Dr. D. Raghavendra Rao *(Chief Medical Officer).*—For nearly seven years, I have had the opportunity of certifying a few children, coming for certificates under the Factory Regulation. There have been several instances when children under 9 were working in some tile factories or even in the Sitaram Mills. They would voluntarily give out their age as above 9. But if their development is the guiding factor as regards certifying, they were certainly children of 6, 7, 8, etc. Similarly at the transitional period of childhood to adolescence, there were several who used to come and say they were above 15 with the ambition of earning a little more in the shape of wages or either to get themselves enlisted. They were prepared to give a false age which was some two or three years more than what they really were. Granting that this state of affairs has continued during the last several years, it is no argument that it should be allowed to continue further, just because some of the people would be thrown out without any means of sustenance. The very fact that they are made to work several hours of the day will be tending towards the checking of their growth and that itself is responsible for making even boys who are really adolescents to be taken as children. So I think it is certainly necessary to stop it once for all.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I amsorry I am not convinced by the argument of the Hon'ble Member for Law or of the Hon'ble Member for Medicine. It does not appear to me to be a question of fitness or unfitness. It is a question of age.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Does he hold that the moment a person is just above 12, he is fit to be worked as an adult?

Mr. T. S. Balarama Ayyar *(Trichur North).*—No, I don't think so. It is only a question of having lesser of the two evils. I want this to be applied only during the transitional period. Let it not be understood by any Member that it would affect the Sitaram Mills. I have got 300 apprentices who are ready to take up the work as adults. It is not the employer that

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is going to suffer, but it is the poor parents that are going to suffer.

Amendment was put and negatived.

Clause 53 was put and carried.

Clauses 54 to 73 were put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*—Sir, I beg to move that Clause 74, sub-division 1, be changed as follows:—"No prosecution under this Regulation, except a Prosecution under Section 66 shall be instituted except by the Inspector and with the previous sanction of the Chief Inspector".

I am prepared to admit that this enactment is intended to better the conditions of labour. But as the saying goes, even a good law is worse than no law, unless it is properly administered. The Inspector is the person who comes in direct contact with the prospective offender and, in season and out of season, he comes in contact with the same person. In a small State like Cochin, there is not much chance of the Inspector getting a shift from one department to another. We find an Inspector starts life as an inspector and retires as such. That is what we find here. The abuse of the Law against the employers should also be guarded against. For any small mistake, it will be very easy for the Inspector or any other person to launch a prosecution. Worry begins with prosecution; it may end or it may continue with the decision of the court before which the prosecution is launched. In British India, the full time Chief Inspector who has only to supervise the work of the Inspectors, will be a check on the inspector. As was pointed out here in the case of Inspectors of police taking the sanction of the Commissioner of Police before they launch any prosecution, the Inspector of factories in British India must necessarily be expected to take the necessary sanction from the full time Chief Inspector before a prosecution is launched. That is the safeguard there. But here, as I pointed out, there is not likely to be any permanent full time Chief Inspector appointed for some time to come. I am therefore simply asking, to prevent any abuse of the law, that the Inspector ought to take sanction from the Chief Inspector, whomsoever it may be, let it be from the District Magistrate or from the Chief Inspector.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I am sorry that I have to express the Government's inability again to accept the Hon'ble Member's proposal. Now,

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here we are conferring powers upon the Inspector. Without Inspector's authority, nobody can prosecute. Suppose the Inspector recommends the prosecution. The appeal is taken to the Chief Inspector, he holds an enquiry and all sorts of delay occur. I am afraid the matter has to be decided by a Court of Law. Certainly it does not come for discussion.

Mr. T. S. Balarama Ayyar *(Trichur North).*—I press the motion for a division.

Amendment was put and lost.

Clause 74 was put and carried.

Clauses 75 to 77 were put and carried.

Mr. T. S. Balarama Ayyar *(Trichur North).*— I am asking to change the date in Clause 78 (1) from two months to three months. In British India it is three months.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Is the Hon'ble Member sure that it is three months there?

Mr. T. S. Balarama Ayyar *(Trichur North).*—Yes, it is three months there.

Mr. H. J. Walmesley *(Planters Special).*—I should like to support this amendment.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—We accept the amendment.

Clause 78 as amended was put and carried.

Clauses 79 to 81 were put and carried.

Title and Preamble were put and carried.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—I move that the Bill may be taken up and passed on Wednesday.

Mr. T. S. Balarama Ayyar *(Trichur North).*—It may be taken up on Thursday.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes.

Motion was put and carried.

The Cochin Chief Court Regulation Amendment Bill.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I rise to introduce the Cochin Chief Court Regulation Amendment Bill. I do not wish to make any speech at

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